

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 197

Introduced by Senators Pavley and Benoit

February 23, 2009

An act to amend Sections 1335, ~~1336, 1337, and 1341~~ 1337, 1341, and 1345 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Pavley. Domestic violence proceedings: conditional examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases, and by the people in cases where the punishment may be other than death, if the defendant is charged with a serious felony and there is evidence that the life of the witness is in jeopardy, and in certain other circumstances.

This bill would also provide for the conditional examination of a witness by the people or the defendant in a case of domestic violence, as defined, when there is evidence that the life of the witness is in jeopardy; ~~when criminal charges arising out of the same acts have been previously dismissed for specified reasons and refiled;~~ or when there is evidence that a victim or material witness has been or is being dissuaded ~~by any means, as provided,~~ from cooperating with the ~~prosecution~~ prosecutor or testifying at trial. The bill would make conforming changes to related provisions.

Existing law requires the testimony of a witness conditionally examined to be reduced to writing and authenticated in the same manner

as that taken in support of an information, and also authorizes the testimony to be video-recorded. Existing law provides that the deposition or a certified copy may be read in evidence, or if the examination was video-recorded, that video-recording may be shown by either party at the trial if the court finds that the witness is unavailable.

This bill would authorize the court to decline to admit conditional examination testimony at the trial if the witness unavailability was caused or procured by the party seeking its admission. Because the bill would exclude relevant evidence in a criminal proceeding, this bill would require a $\frac{2}{3}$ vote of each house of the Legislature pursuant to certain provisions of the California Constitution.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1335 of the Penal Code is amended to
2 read:

3 1335. (a) When a defendant has been charged with a public
4 offense triable in any court, he or she in all cases, and the people
5 in cases other than those for which the punishment may be death,
6 may, if the defendant has been fully informed of his or her right
7 to counsel as provided by law, have witnesses examined
8 conditionally in his or her or their behalf, as prescribed in this
9 chapter.

10 (b) When a defendant has been charged with a serious felony
11 or in a case of domestic violence, the people or the defendant may,
12 if the defendant has been fully informed of his or her right to
13 counsel as provided by law, have a witness examined conditionally
14 as prescribed in this chapter, if there is evidence that the life of the
15 witness is in jeopardy.

16 (c) As used in this section, “serious felony” means any of the
17 felonies listed in subdivision (c) of Section 1192.7 or any violation
18 of Section 11351, 11352, 11378, or 11379 of the Health and Safety
19 Code.

20 ~~(d) If a defendant has been charged in a case of domestic~~
21 ~~violence and there is evidence that criminal charges arising out of~~
22 ~~the same acts have been previously dismissed and refiled pursuant~~
23 ~~to paragraph (2) or (3) of subdivision (a), or subdivision (b), of~~
24 ~~Section 1387, the people or the defendant may, if the defendant~~

1 has been fully informed of his or her right to counsel as provided
2 by law, have a witness examined conditionally as prescribed in
3 this chapter.

4 (e)

5 (d) If a defendant has been charged ~~in~~ with a case of domestic
6 violence and there is evidence that a victim or material witness
7 has been or is being dissuaded by ~~any means the defendant or any~~
8 *person acting on behalf of the defendant, by intimidation or a*
9 *physical threat*, from cooperating with the ~~prosecution~~ prosecutor
10 or testifying at trial, the people or the defendant may, if the
11 defendant has been fully informed of his or her right to counsel as
12 provided by law, have a witness examined conditionally as
13 prescribed in this chapter.

14 (f)

15 (e) For the purposes of this section, “domestic violence” means
16 any public offense arising from acts of domestic violence as defined
17 in Section 13700.

18 SEC. 2. Section 1336 of the Penal Code is amended to read:

19 1336. (a) When a material witness for the defendant, or for
20 the people, is about to leave the state, or is so sick or infirm as to
21 afford reasonable grounds for apprehension that he or she will be
22 unable to attend the trial, or is a person 65 years of age or older,
23 or a dependent adult, or is a victim or material witness in a case
24 charging domestic violence who has been or is being dissuaded
25 by any means from cooperating with the prosecution or testifying
26 at trial, the defendant or the people may apply for an order that the
27 witness be examined conditionally.

28 (b) When there is evidence that the life of a witness is in
29 jeopardy, or, in a case of domestic violence, if criminal charges
30 arising out of the same acts have been previously dismissed and
31 refiled pursuant to paragraph (2) or (3) of subdivision (a), or
32 subdivision (b), of Section 1387, the defendant or the people may
33 apply for an order that the witness be examined conditionally.

34 (c) As used in this section, “dependent adult” means any person
35 who is between the ages of 18 and 65, who has physical or mental
36 limitations which restrict his or her ability to carry out normal
37 activities or to protect his or her rights, including, but not limited
38 to, persons who have physical or developmental disabilities or
39 whose physical or mental abilities have diminished because of
40 age. “Dependent adult” includes any person between the ages of

1 18 and 65, who is admitted as an inpatient to a 24-hour facility, as
2 defined in Sections 1250, 1250.2, and 1250.3 of the Health and
3 Safety Code.

4 ~~(d) As used in this section, “domestic violence” means any~~
5 ~~public offense arising from acts of domestic violence as defined~~
6 ~~in Section 13700.~~

7 ~~SEC. 3.~~

8 *SEC. 2.* Section 1337 of the Penal Code is amended to read:

9 1337. The application shall be made upon affidavit stating all
10 of the following:

11 (a) The nature of the offense charged.

12 (b) The state of the proceedings in the action.

13 (c) The name and residence of the witness, and that his or her
14 testimony is material to the defense or the prosecution of the action.

15 (d) That the witness is about to leave the state, or is so sick or
16 infirm as to afford reasonable grounds for apprehending that he
17 or she will not be able to attend the trial, or is a person 65 years
18 of age or older, or a dependent adult, or that the life of the witness
19 is in jeopardy, or that the witness is a victim or material witness
20 in a domestic violence case who has been or is being ~~dissuaded~~

21 ~~by any means intimidated or threatened as described in subdivision~~
22 ~~(d) of Section 1335 from cooperating with the prosecution~~
23 ~~prosecutor or testifying at trial, or that the witness is a victim or~~
24 ~~material witness in a domestic violence case and criminal charges~~
25 ~~arising out of the same acts have been previously dismissed and~~
26 ~~refiled pursuant to paragraph (2) or (3) of subdivision (a), or~~
27 ~~subdivision (b), of Section 1387..~~

28 ~~SEC. 4.~~

29 *SEC. 3.* Section 1341 of the Penal Code is amended to read:

30 1341. If, at the designated time and place, it is shown to the
31 satisfaction of the magistrate that the stated ground for conditional
32 examination is not true or that the application was made to avoid
33 the examination of the witness at the trial, the examination cannot
34 take place.

35 *SEC. 4.* Section 1345 of the Penal Code is amended to read:

36 1345. The deposition, or a certified copy of it, may be read in
37 evidence, or if the examination was video-recorded, that
38 video-recording may be shown by either party at the trial if the
39 court finds that the witness is unavailable as a witness within the
40 meaning of Section 240 of the Evidence Code. *The court may*

1 *decline to admit conditional examination testimony at the trial if*
2 *the witness unavailability was caused or procured by the party*
3 *seeking its admission.* The same objections may be taken to a
4 question or answer contained in the deposition or video-recording
5 as if the witness had been examined orally in court.

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